

Department of Attorney General

Peter F. Kilmartin, Attorney General



**Co-sponsored by the Roger Williams
University Law Alumni Association**

DOES APRA APPLY?

“or any other public or private agency, person, partnership, corporation, or business entity acting on behalf of and/or in place of any public agency”

R.I.G.L. § 38-2-2(1)

East Bay Newspaper v. Mt. Hope Trust, PR 10-39

DOES APRA APPLY?

- Questions vs. Documents
- Provide Documents, Not Answers
Chase v. DOC, PR 11-05;
Thurber v. Town of North Smithfield, PR 10-09
- Not a Research Assistant
Blais v. Revens, 2002 WL 31546103
(R.I. Super. 2002)

The Purpose

The right to access public records and the right to dignity and privacy are both recognized to be of the utmost importance.

R.I.G.L. § 38-2-1

Is It a Public Record?

- Does one of the twenty-five exceptions apply?
- The Balancing Test: Does the individual's privacy interest outweigh the public's interest in disclosure?

THE EXEMPTIONS

§ 38-2-2(5)(i)(A)(I)-(Y)

May (not Must) be Provided

Identifiable Records

All records identifiable to an individual applicant for benefits, client, patient, student, or employee

R.I.G.L. § 38-2-2(5)(i)(A)(I);

S. County Ind. v. S. Kingstown School Dept., PR 10-14;

Silvia v. Town of Warren, PR 11-19

Any reasonably segregable
portion of a public record
shall be available

*R.I.G.L § 38-2-2(ii);
d'Oliveira v. Department of Public Safety, PR 11-10*

Public Employee Information

- name
- gross salary
- salary range
- total cost of paid fringe benefits
- gross amount received in overtime
- other remuneration
- job title
- job description
- dates of employment
- positions held with the state or municipality
- work location
- business telephone number
- city/town of residence
- date of termination

LAW ENFORCEMENT

Records maintained by law enforcement agencies for criminal law enforcement are exempt, but only if disclosure could:

R.I.G.L. § 38-2-2(5)(i)(D)

- (a) reasonably be expected to interfere with investigations of criminal activity or enforcement proceedings
- (b) deprive a person of the right to a fair trial
- (c) reasonably be expected to constitute an unwarranted invasion of personal privacy

- (d) reasonably be expected to identify a confidential source
- (e) disclose techniques, procedures, or guidelines for law enforcement investigations or prosecutions
- (f) reasonably be expected to endanger the life or physical safety of any individual

Records relating to the
management and the direction of
a law enforcement agency and
records or reports reflecting the
initial arrest of an adult are public
records

*R.I.G.L. § 38-2-2(5)(i)(D);
Snow v. Dept. of Public Safety, PR 10-12;
Valley Breeze v. City of Pawtucket, PR 10-37*

Preliminary drafts, notes,
impressions, memoranda, working
papers, and work products

Exception: above documents submitted
at a public meeting shall be
public

*R.I.G.L. § 38-2-2(5)(i)(K);
Chrabaszcz v. Johnston School Dept., PR 04-15;
North East Ind. v. E. Greenwich School Dist., PR 11-12*

Correspondence of/to elected
officials with or relating to
those they represent and
correspondence of/to elected
officials in their official
capacity

R.I.G.L. § 38-2-2(5)(i)(M)

All investigatory records of
public bodies pertaining to
possible violations of
statute, rule, or regulation,
other than records of final
action taken

R.I.G.L. § 38-2-2(5)(i)(P)

Records, reports, opinions,
information, and statements
required to be kept
confidential by federal law,
regulation, state law, or rule
of court

R.I.G.L. § 38-2-2(5)(i)(S)

Balancing Test

Does the privacy interest
of the individual outweigh
the public's interest in
disclosure?

DARE v. Gannon, 713 A.2d 218, 225 (R.I. 1998)

Fuka et al. v. R.I. DEM,
(Indeglia, J., April 2007)

home addresses of all
licensed commercial
fishermen and dealers

See also Fazzio v. City of Providence, PR 10-20

“Each public body shall establish procedures regarding access to public records”

- No written request if available per APA or prepared for/readily available to the public

*R.I.G.L. § 38-2-3(c);
Cf. Stafford v. RI Family Court, PR 11-13 with
Fitzmorris v. Portsmouth Town Council, PR 11-20*

PROCEDURES

- Where/How Request Made

Kossin v. Providence School Dept., PR 10-06

- In Writing or Otherwise Communicated
- Who Responds

Riley v. Town of Narragansett, PR 10-11

Pomfret v. Western Coventry Fire Dist., PR 10-28

Timeframe to Respond After Receiving a Request

- provide the records within ten (10) business days, **or**
- extend the time period for an additional twenty (20) business days for “good cause,” **or**
- deny access to records within ten (10) business days

R.I.G.L. § 38-2-7;

Kooloian v. Town of North Providence, PR 10-18

Procedures for Denying Access to Records

- denial must be *in writing*, and
- state the specific reason(s) for the denial, and
- indicate the procedure(s) for an appeal in R.I.G.L. § 38-2-8

*R.I.G.L. § 38-2-7;
Downey v. Carcieri, 996 A.2d 1144 (R.I. 2010);
Deion v. Town of North Providence, PR 10-21*

Procedures *Prior* to Providing Records

- provide estimate of charges, **and**
- upon request, detailed itemization of search/retrieval costs, **and**
- perform search/retrieval within reasonable amount of time, **and**
- provide reduction or waiver of search/retrieval costs upon a court order

Cost and Delivery Procedures

- \$.15 per photocopy on common/legal size paper
- \$15.00 per search/retrieval hour, no charge for the first hour
- No more than the actual reasonable cost for providing electronic records

R.I.G.L. § 38-2-4

“the costs of redaction should be borne by the requesting party because it is part of the process of retrieving and producing the requested document”

DARE v. Gannon, 819 A.2d 651, 661
(R.I. 2003)

Every person or entity
shall have the right to
inspect and/or copy
records

R.I.G.L. § 38-2-3(a)

No requirement to reorganize,
consolidate, or compile data
not maintained in the
requested form

Exception: records in an electronic
format and not unduly burdensome

*R.I.G.L. § 38-2-3(f);
Matuszek v. Town of Narragansett, PR 10-36*

“Any person or entity requesting copies of public records may elect to obtain them in any and all media in which the public agency is capable of providing them”

*R.I.G.L. § 38-2-3(e);
Kent v. RI Office of Energy Resources, PR 10-16*

“No person or business entity shall use information obtained from public records pursuant to this chapter **to solicit for commercial purposes** or to obtain a commercial advantage over the party furnishing that information to the public body.”

*R.I.G.L § 38-2-6;
R.I. Assoc. of Realtors v. Whitehouse,
51 F.Supp. 2d 107 (D.R.I. 1999)*

Department of Attorney General

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Open Meetings Act

Purpose

“It is essential...that public business be performed in an open and public manner and that citizens be advised of and aware of the performance of public officials and the deliberations and decisions that go into the making of Public Policy.”

R.I.G.L. § 42-46-1

Threshold Questions

- Is this a “public body”?
- Is there a “quorum”?
- Is this a “meeting”?

Public Body

“department, agency, commission, committee, board, council, bureau, or authority or any subdivision thereof of state or municipal government”

R.I.G.L. § 42-46-2(c);

*McNamara v. Pawtuxet River Authority & Water
Shed Council, OM 10-20*

Public Body

Any political party or organization
is not a public body, provided that
no meeting shall circumvent the
OMA

Flanagan v. Coventry Town Council, OM 11-10

Quorum

“unless otherwise defined
... a simple majority of
the membership”

“Rolling” or “Walking” Quorum

A series of meetings each less than a “quorum” but that collectively represent a “quorum”

Ives v. Town of New Shoreham, OM 11-16;
Kenney v. Hopkinton Town Council, OM 10-05

Meeting

“The convening of a public body to discuss and/or act upon a matter over which the public body has supervision, control, jurisdiction, or advisory power”

R.I.G.L. § 42-46-2(a)

Bozyan v. Middletown Town Council, OM 11-17

EXECUTIVE SESSION

- Every meeting of all public bodies shall be open to the public unless closed pursuant to §§ 42-46-4 and 42-46-5.

R.I.G.L. § 42-46-3

- Purposes for which may be closed.

R.I.G.L. § 42-46-5(a)(1)-(10)

R.I.G.L. § 42-46-5(a)(1)

Discussions relating to job performance, character, or physical or mental health of a person(s), provided that:

- such person **shall** receive advanced written notice that discussion may take place in open session
- Public body states in open call and records in open session minutes that notice provided

Johnson v. West Greenwich Town Council, OM 11-07;
In re Town of Charlestown, ADV OM 11-02

R.I.G.L. § 42-46-5(a)(8)

School Committee sessions to conduct student disciplinary hearings or to review other matters relating to the privacy of students or their records, provided that:

- advanced written notice that discussion may take place in open session
- public body states in open call and records in open session minutes that notice provided

R.I.G.L. § 42-46-5(a)(2)

Sessions or work sessions
pertaining to collective
bargaining or litigation

Barrington Times v. Barrington Sch. Comm., OM 09-10

R.I.G.L. § 42-46-5(a)(9)

Any hearings on, or
discussions of, a grievance
filed pursuant to a
collective bargaining
agreement

OPEN CALL

- Majority Vote
- Citation and Statement of Discussion
- Not discuss any matter not cited

R.I.G.L. § 42-46-4(a);

Graziano v. R.I. Lottery Comm., OM 99-06

Votes

- An executive session vote must be disclosed as soon as the open session is reconvened
- Within two (2) weeks of any vote a record listing how each member voted on each issue must be available

Clarke v. N. Cumberland Fire Dist.,
OM 10-21

Exception: If disclosure would jeopardize any strategy, negotiation, or investigation

Two Types of Notice

- Annual Notice: at the beginning of each calendar year
- Supplemental Notice: a minimum of 48 hours before every meeting

Duffy v. West Greenwich Town Council, OM 11-12

Posting Requirements

- Principal office of public body
- One other prominent location within the governmental unit
- Secretary of State

R.I.G.L. § 42-46-6(c);

as amended by the FY12 Budget;

Stewart et al v. West Greenwich Town Council, OM 11-13

Posting Requirements School Committee

~~Must also publish notice in
newspaper of general circulation~~

~~Exception: Ad hoc committees,
sub committees, and advisory
committees~~

Notice Requirements

Annual

- Dates, times and location of regularly scheduled meetings
- Available to public upon request

Supplemental

- Date, time and location of all meetings
- Date posted
- Statement specifying business to be discussed

Tanner v. East Greenwich,
880 A.2d 784 (R.I. 2005)

“such notice, based on the totality of the circumstances, as would fairly inform the public of the nature of the business to be discussed or acted upon.”

IMPROPER NOTICE

- New Business/Old Business
- Any other matter brought before the Board
- “Directors’ Report”

Executive Session Notice

- No boiler plate language
- Identify number of items to be discussed
- Statement of each item to be discussed

Graziano v. R.I. Lott'y Comm., OM 99-06

- If publicly known, provide detailed statement
- If not publicly known, may use more general language

IMPROPER NOTICE

- Executive Session – Pursuant to R.I.G.L. 42-46-5, A,1,2 – Personnel & Litigation & Collective Bargaining

Andrea v. West Greenwich Town Council, OM 11-14

- Executive Session: personnel decisions

Pena v. ICS, OM 10-14

Amending Agenda (Not School Committee)

- By majority vote
- Informational purposes only and may not be voted on except:
 1. Emergency
 2. Refer matter to another committee/person

*R.I.G.L. § 42-46-6(b);
Jenks v. Pascoag Bd. of Fire Comm., OM 10-11*

Amending Agenda School Committee

1. Posted within 48 hours of meeting at:
 - a. The 2 public locations
 - b. Secretary of State
 - c. Posted on School District's website
2. *Amended items unexpected and could not have been added for newspaper publication*
3. *State for record and minutes why agenda items could not have been added in newspaper and need to be addressed at this meeting*

Amending Agenda

School Committee (*Cont.*)

4. Process available to provide timely notice to:
 - a. Any person who has requested
 - b. Reasonable steps taken to make public aware
5. Original notice indicate that changes will be:
 - a. Posted on website
 - b. Posted in 2 locations
 - c. Filed with Secretary of State

R.I.G.L. § 42-46-6(e)

Minutes: contents

- the date, time, and place of the meeting
- the members who are absent/present
- a record by individual member of any vote(s) taken
- any other relevant information that a member of the public body requests

R.I.G.L. § 42-46-7(a)

Minutes: availability

- Unofficial minutes within 35 days of the meeting, or
- At next regularly scheduled meeting, whichever is earlier

Exception:

- sealed executive session minutes
- extend time period and publicly state reason

R.I.G.L. § 42-46-7(b);

Hummel v. City of Central Falls, OM 10-13

Minutes

All state and quasi-public boards shall keep approved minutes and file a copy of all open meetings with the Secretary of State within 35 days of a meeting

Exception: Advisory Public Bodies

R.I.G.L. § 42-46-7(d)

All open meetings must
be accessible to
persons with
disabilities

R.I.G.L. § 42-46-13

Public Comment (Not School Committee)

Public body may respond to
comments initiated by a
member of the public during a
properly noticed open forum

R.I.G.L. § 42-46-6(d);

Kenney v. Hopkinton Town Council, OM 08-14

Public Comment School Committee

Pursuant to a request:

1. Submitted in writing
2. By a member of the public
3. During the public comment session
4. Informational purposes only

R.I.G.L. § 42-46-6(b)

Nothing requires any public body to hold an open forum session, to entertain or respond to any topic nor does it prohibit any public body from limiting comment on any topic

R.I.G.L. § 42-46-6(d);

Mankofsky v. Middletown Town Council, OM 11-11

Emergency Meeting

Upon a majority vote, an emergency meeting may be convened:

“to address an unexpected occurrence that requires immediate action to protect the public.”

R.I.G.L. § 42-46-6(c);

Kalunian v. Coventry Town Council, OM 09-14

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